



LUCENT TECHNOLOGIES INC  
DOCKET ADMINISTRATOR  
101 CRAWFORDS CORNER ROAD  
ROOM 3J-219  
HOLMDEL, NJ 07733

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JUN 20 2005

**OFFICE OF PETITIONS**

In re Application of	:	
John P. Hearn et al	:	
Application No. 09/608,473	:	ON PETITION
Filed: June 30, 2000	:	
Attorney Docket No. 1-21-1	:	

This is a decision on the petition under 37 CFR 1.137(b), filed June 6, 2005, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply within the meaning of 37 CFR 1.113 in a timely manner to the final Office action mailed May 27, 2004, which set a shortened statutory period for reply of three (3) months. A reply under 37 CFR 1.113 is limited to an amendment that *prima facie* places the application in condition for allowance or a Notice of Appeal (and appeal fee required by 37 CFR 1.17(b)). The amendment submitted on November 19, 2004, did not *prima facie* place the application in condition for allowance as noted in the Advisory Action mailed January 21, 2005. Therefore, as no Notice of Appeal (and appeal fee), Request for Continued Examination (RCE) or a continuing application was timely filed, extension of time under the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the above-identified application became abandoned on November 28, 2004.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Accordingly, since the \$1,020 extension of time submitted on February 22, 2005 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to petitioner's Deposit Account No. 12-2325.

The Office Finance records show that the Notice of Appeal was inadvertently

charged twice. Therefore, a refund of \$500 is being credited to the above-noted deposit account.

Telephone inquiries concerning this decision should be directed to Wan Laymon at (571) 272-3220.

This matter is being referred to Technology Center AU 2155.

  
Wan Laymon

Petitions Examiner

Office of Petitions

Office of the Deputy Commissioner  
for Patent Examination Policy